
ENGROSSED SUBSTITUTE HOUSE BILL 3179

State of Washington

61st Legislature

2010 Regular Session

By House Finance (originally sponsored by Representatives Springer and Ericks)

READ FIRST TIME 02/09/10.

1 AN ACT Relating to local excise tax provisions for counties and
2 cities; amending RCW 82.14.450, 82.14.460, 82.14.340, 82.12.010,
3 82.14.230, and 9.46.113; and repealing 2009 c 551 s 12 (uncodified).

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.14.450 and 2009 c 551 s 1 are each amended to read
6 as follows:

7 (1) A county legislative authority may submit an authorizing
8 proposition to the county voters at a primary or general election and,
9 if the proposition is approved by a majority of persons voting, impose
10 a sales and use tax in accordance with the terms of this chapter. The
11 title of each ballot measure must clearly state the purposes for which
12 the proposed sales and use tax will be used. (~~Funds raised under this
13 tax shall not supplant existing funds used for these purposes, except
14 as follows: Up to one hundred percent may be used to supplant existing
15 funding in calendar year 2010; up to eighty percent may be used to
16 supplant existing funding in calendar year 2011; up to sixty percent
17 may be used to supplant existing funding in calendar year 2012; up to
18 forty percent may be used to supplant existing funding in calendar year
19 2013; and up to twenty percent may be used to supplant existing funding~~)

1 ~~in calendar year 2014. For purposes of this subsection, existing funds~~
2 ~~means the actual operating expenditures for the calendar year in which~~
3 ~~the ballot measure is approved by voters. Actual operating~~
4 ~~expenditures excludes lost federal funds, lost or expired state grants~~
5 ~~or loans, extraordinary events not likely to reoccur, changes in~~
6 ~~contract provisions beyond the control of the county or city receiving~~
7 ~~the services, and major nonrecurring capital expenditures.))~~ The rate
8 of tax under this section may not exceed three-tenths of one percent of
9 the selling price in the case of a sales tax, or value of the article
10 used, in the case of a use tax.

11 (2)(a) A city legislative authority may submit an authorizing
12 proposition to the city voters at a primary or general election and, if
13 the proposition is approved by a majority of persons voting, impose a
14 sales and use tax in accordance with the terms of this chapter. The
15 title of each ballot measure must clearly state the purposes for which
16 the proposed sales and use tax will be used. The title of each ballot
17 measure must clearly state the purposes for which the proposed sales
18 and use tax will be used. The rate of tax under this subsection may
19 not exceed one-tenth of one percent of the selling price in the case of
20 a sales tax, or value of the article used, in the case of a use tax.
21 A city may not begin imposing a tax approved by the voters under this
22 subsection prior to January 1, 2011.

23 (b) If a county adopts an ordinance or resolution to submit a
24 ballot proposition to the voters to impose the sales and use tax under
25 subsection (1) of this section prior to a city within the county
26 adopting an ordinance or resolution to submit a ballot proposition to
27 the voters to impose the tax under this subsection, the rate of tax by
28 the city under this subsection may not exceed an amount that would
29 cause the total county and city tax rate under this section to exceed
30 three-tenths of one percent. This subsection (2)(b) also applies if
31 the county and city adopt an ordinance or resolution to impose sales
32 and use taxes under this section on the same date.

33 (c) If the city adopts an ordinance or resolution to impose the
34 sales and use tax under this subsection prior to the county in which
35 the city is located, the county must provide a credit against its tax
36 under subsection (1) of this section for the city tax under this
37 subsection to the extent the total county and city tax rate under this
38 section would exceed three-tenths of one percent.

1 (3) The tax authorized in this section is in addition to any other
2 taxes authorized by law and must be collected from those persons who
3 are taxable by the state under chapters 82.08 and 82.12 RCW upon the
4 occurrence of any taxable event within the county.

5 (~~(3)~~) (4) The retail sale or use of motor vehicles, and the lease
6 of motor vehicles for up to the first thirty-six months of the lease,
7 are exempt from tax imposed under this section.

8 (~~(4)~~) (5) One-third of all money received under this section must
9 be used solely for criminal justice purposes, fire protection purposes,
10 or both. For the purposes of this subsection, "criminal justice
11 purposes" has the same meaning as provided in RCW 82.14.340.

12 (~~(5)~~) (6) Money received by a county under subsection (1) of this
13 section must be shared between the county and the cities as follows:
14 Sixty percent must be retained by the county and forty percent must be
15 distributed on a per capita basis to cities in the county.

16 (7) Tax proceeds received by a city imposing a tax under this
17 section must be shared between the county and city as follows: Fifteen
18 percent must be distributed to the county and eighty-five percent is
19 retained by the city.

20 **Sec. 2.** RCW 82.14.460 and 2009 c 551 s 2 are each amended to read
21 as follows:

22 (1) (a) Except as provided in (b) of this subsection, a county
23 legislative authority may authorize, fix, and impose a sales and use
24 tax in accordance with the terms of this chapter.

25 (b) Any city with a population over two hundred thousand and
26 located in a county with a population over eight hundred thousand may
27 authorize, fix, and impose the sales and use tax in lieu of the county
28 if the county has not imposed the tax authorized under (a) of this
29 subsection by January 1, 2011. If a city imposes the tax under this
30 subsection (1)(b) the county within which the city is located may not
31 impose the tax authorized under (a) of this subsection.

32 (2) The tax authorized in this section (~~(shall be)~~) is in addition
33 to any other taxes authorized by law and (~~(shall)~~) must be collected
34 from those persons who are taxable by the state under chapters 82.08
35 and 82.12 RCW upon the occurrence of any taxable event within the
36 county. The rate of tax (~~(shall)~~) equals one-tenth of one percent of

1 the selling price in the case of a sales tax, or value of the article
2 used, in the case of a use tax.

3 (3) Moneys collected under this section (~~(shall)~~) must be used
4 solely for the purpose of providing for the operation or delivery of
5 chemical dependency or mental health treatment programs and services
6 and for the operation or delivery of therapeutic court programs and
7 services. For the purposes of this section, "programs and services"
8 includes, but is not limited to, treatment services, case management,
9 and housing that are a component of a coordinated chemical dependency
10 or mental health treatment program or service.

11 (4) All moneys collected under this section must be used solely for
12 the purpose of providing new or expanded programs and services as
13 provided in this section, except a portion of moneys collected under
14 this section may be used to supplant existing funding for these
15 purposes in any county as follows: Up to fifty percent may be used to
16 supplant existing funding in calendar year 2010; up to forty percent
17 may be used to supplant existing funding in calendar year 2011; up to
18 thirty percent may be used to supplant existing funding in calendar
19 year 2012; up to twenty percent may be used to supplant existing
20 funding in calendar year 2013; and up to ten percent may be used to
21 supplant existing funding in calendar year 2014.

22 (5) Nothing in this section may be interpreted to prohibit the use
23 of moneys collected under this section for the replacement of lapsed
24 federal funding previously provided for the operation or delivery of
25 services and programs as provided in this section.

26 **Sec. 3.** RCW 82.14.340 and 1995 c 309 s 1 are each amended to read
27 as follows:

28 The legislative authority of any county may fix and impose a sales
29 and use tax in accordance with the terms of this chapter, provided that
30 such sales and use tax is subject to repeal by referendum, using the
31 procedures provided in RCW 82.14.036. The referendum procedure
32 provided in RCW 82.14.036 is the exclusive method for subjecting any
33 county sales and use tax ordinance or resolution to a referendum vote.

34 The tax authorized in this section shall be in addition to any
35 other taxes authorized by law and shall be collected from those persons
36 who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW
37 upon the occurrence of any taxable event within such county. The rate

1 of tax shall equal one-tenth of one percent of the selling price (in
2 the case of a sales tax) or value of the article used (in the case of
3 a use tax).

4 When distributing moneys collected under this section, the state
5 treasurer shall distribute ten percent of the moneys to the county in
6 which the tax was collected. The remainder of the moneys collected
7 under this section shall be distributed to the county and the cities
8 within the county ratably based on population as last determined by the
9 office of financial management. In making the distribution based on
10 population, the county shall receive that proportion that the
11 unincorporated population of the county bears to the total population
12 of the county and each city shall receive that proportion that the city
13 incorporated population bears to the total county population.

14 Moneys received from any tax imposed under this section shall be
15 expended (~~(exclusively)~~) for criminal justice purposes (~~(and shall not~~
16 ~~be used to replace or supplant existing funding)~~). Criminal justice
17 purposes are defined as activities that substantially assist the
18 criminal justice system, which may include circumstances where
19 ancillary benefit to the civil justice system occurs, and which
20 include(~~(s)~~) human services, domestic violence services such as those
21 provided by domestic violence programs, community advocates, and legal
22 advocates, as defined in RCW 70.123.020. (~~(Existing funding for~~
23 ~~purposes of this subsection is defined as calendar year 1989 actual~~
24 ~~operating expenditures for criminal justice purposes. Calendar year~~
25 ~~1989 actual operating expenditures for criminal justice purposes~~
26 ~~exclude the following: Expenditures for extraordinary events not~~
27 ~~likely to reoccur, changes in contract provisions for criminal justice~~
28 ~~services, beyond the control of the local jurisdiction receiving the~~
29 ~~services, and major nonrecurring capital expenditures.)~~)

30 In the expenditure of funds for criminal justice purposes as
31 provided in this section, cities and counties, or any combination
32 thereof, are expressly authorized to participate in agreements,
33 pursuant to chapter 39.34 RCW, to jointly expend funds for criminal
34 justice purposes of mutual benefit. Such criminal justice purposes of
35 mutual benefit include, but are not limited to, the construction,
36 improvement, and expansion of jails, court facilities, (~~(and)~~) juvenile
37 justice facilities, and services with ancillary benefits to the civil
38 justice system.

1 **Sec. 4.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to
2 read as follows:

3 For the purposes of this chapter:

4 (1) "Purchase price" means the same as sales price as defined in
5 RCW 82.08.010;

6 (2)(a) "Value of the article used" shall be the purchase price for
7 the article of tangible personal property, the use of which is taxable
8 under this chapter. The term also includes, in addition to the
9 purchase price, the amount of any tariff or duty paid with respect to
10 the importation of the article used. In case the article used is
11 acquired by lease or by gift or is extracted, produced, or manufactured
12 by the person using the same or is sold under conditions wherein the
13 purchase price does not represent the true value thereof, the value of
14 the article used (~~shall be~~) is determined as nearly as possible
15 according to the retail selling price at place of use of similar
16 products of like quality and character under such rules as the
17 department may prescribe.

18 (b) In case the articles used are acquired by bailment, the value
19 of the use of the articles so used (~~shall~~) must be in an amount
20 representing a reasonable rental for the use of the articles so bailed,
21 determined as nearly as possible according to the value of such use at
22 the places of use of similar products of like quality and character
23 under such rules as the department of revenue may prescribe. In case
24 any such articles of tangible personal property are used in respect to
25 the construction, repairing, decorating, or improving of, and which
26 become or are to become an ingredient or component of, new or existing
27 buildings or other structures under, upon, or above real property of or
28 for the United States, any instrumentality thereof, or a county or city
29 housing authority created pursuant to chapter 35.82 RCW, including the
30 installing or attaching of any such articles therein or thereto,
31 whether or not such personal property becomes a part of the realty by
32 virtue of installation, then the value of the use of such articles so
33 used (~~shall be~~) is determined according to the retail selling price
34 of such articles, or in the absence of such a selling price, as nearly
35 as possible according to the retail selling price at place of use of
36 similar products of like quality and character or, in the absence of
37 either of these selling price measures, such value may be determined

1 upon a cost basis, in any event under such rules as the department of
2 revenue may prescribe.

3 (c) In the case of articles owned by a user engaged in business
4 outside the state which are brought into the state for no more than one
5 hundred eighty days in any period of three hundred sixty-five
6 consecutive days and which are temporarily used for business purposes
7 by the person in this state, the value of the article used (~~((shall))~~)
8 must be an amount representing a reasonable rental for the use of the
9 articles, unless the person has paid tax under this chapter or chapter
10 82.08 RCW upon the full value of the article used, as defined in (a) of
11 this subsection.

12 (d) In the case of articles manufactured or produced by the user
13 and used in the manufacture or production of products sold or to be
14 sold to the department of defense of the United States, the value of
15 the articles used (~~((shall be))~~) is determined according to the value of
16 the ingredients of such articles.

17 (e) In the case of an article manufactured or produced for purposes
18 of serving as a prototype for the development of a new or improved
19 product, the value of the article used (~~((shall be))~~) is determined by:
20 (i) The retail selling price of such new or improved product when first
21 offered for sale; or (ii) the value of materials incorporated into the
22 prototype in cases in which the new or improved product is not offered
23 for sale.

24 (f) In the case of an article purchased with a direct pay permit
25 under RCW 82.32.087, the value of the article used (~~((shall be))~~) is
26 determined by the purchase price of such article if, but for the use of
27 the direct pay permit, the transaction would have been subject to sales
28 tax;

29 (3) "Value of the service used" means the purchase price for the
30 digital automated service or other service, the use of which is taxable
31 under this chapter. If the service is received by gift or under
32 conditions wherein the purchase price does not represent the true value
33 thereof, the value of the service used (~~((shall be))~~) is determined as
34 nearly as possible according to the retail selling price at place of
35 use of similar services of like quality and character under rules the
36 department may prescribe;

37 (4) "Value of the extended warranty used" means the purchase price
38 for the extended warranty, the use of which is taxable under this

1 chapter. If the extended warranty is received by gift or under
2 conditions wherein the purchase price does not represent the true value
3 of the extended warranty, the value of the extended warranty used
4 (~~shall be~~) is determined as nearly as possible according to the
5 retail selling price at place of use of similar extended warranties of
6 like quality and character under rules the department may prescribe;

7 (5) "Value of the digital good or digital code used" means the
8 purchase price for the digital good or digital code, the use of which
9 is taxable under this chapter. If the digital good or digital code is
10 acquired other than by purchase, the value of the digital good or
11 digital code must be determined as nearly as possible according to the
12 retail selling price at place of use of similar digital goods or
13 digital codes of like quality and character under rules the department
14 may prescribe;

15 (6) "Use," "used," "using," or "put to use" have their ordinary
16 meaning, and mean:

17 (a) With respect to tangible personal property, except for natural
18 gas and manufactured gas, the first act within this state by which the
19 taxpayer takes or assumes dominion or control over the article of
20 tangible personal property (as a consumer), and include installation,
21 storage, withdrawal from storage, distribution, or any other act
22 preparatory to subsequent actual use or consumption within this state;

23 (b) With respect to a service defined in RCW 82.04.050(2)(a), the
24 first act within this state after the service has been performed by
25 which the taxpayer takes or assumes dominion or control over the
26 article of tangible personal property upon which the service was
27 performed (as a consumer), and includes installation, storage,
28 withdrawal from storage, distribution, or any other act preparatory to
29 subsequent actual use or consumption of the article within this state;

30 (c) With respect to an extended warranty, the first act within this
31 state after the extended warranty has been acquired by which the
32 taxpayer takes or assumes dominion or control over the article of
33 tangible personal property to which the extended warranty applies, and
34 includes installation, storage, withdrawal from storage, distribution,
35 or any other act preparatory to subsequent actual use or consumption of
36 the article within this state;

37 (d) With respect to a digital good or digital code, the first act

1 within this state by which the taxpayer, as a consumer, views,
2 accesses, downloads, possesses, stores, opens, manipulates, or
3 otherwise uses or enjoys the digital good or digital code;

4 (e) With respect to a digital automated service, the first act
5 within this state by which the taxpayer, as a consumer, uses, enjoys,
6 or otherwise receives the benefit of the service;

7 (f) With respect to a service defined as a retail sale in RCW
8 82.04.050(6)(b), the first act within this state by which the taxpayer,
9 as a consumer, accesses the prewritten computer software; (~~and~~)

10 (g) With respect to a service defined as a retail sale in RCW
11 82.04.050(2)(g), the first act within this state after the service has
12 been performed by which the taxpayer, as a consumer, views, accesses,
13 downloads, possesses, stores, opens, manipulates, or otherwise uses or
14 enjoys the digital good upon which the service was performed; and

15 (h) With respect to natural gas or manufactured gas, the use of
16 which is taxable under RCW 82.12.022, including gas that is also
17 taxable under the authority of RCW 82.14.230, the first act within this
18 state by which the taxpayer consumes the gas by burning the gas or
19 storing the gas in the taxpayer's own facilities for later consumption
20 by the taxpayer;

21 (7) "Taxpayer" and "purchaser" include all persons included within
22 the meaning of the word "buyer" and the word "consumer" as defined in
23 chapters 82.04 and 82.08 RCW;

24 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),
25 "retailer" means every seller as defined in RCW 82.08.010 and every
26 person engaged in the business of selling tangible personal property at
27 retail and every person required to collect from purchasers the tax
28 imposed under this chapter.

29 (ii) "Retailer" does not include a professional employer
30 organization when a covered employee coemployed with the client under
31 the terms of a professional employer agreement engages in activities
32 that constitute a sale of tangible personal property, extended
33 warranty, digital good, digital code, or a sale of any digital
34 automated service or service defined as a retail sale in RCW 82.04.050
35 (2) (a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by
36 this chapter. In such cases, the client, and not the professional
37 employer organization, is deemed to be the retailer and is responsible
38 for collecting and remitting the tax imposed by this chapter.

1 (b) For the purposes of (a) of this subsection, the terms "client,"
2 "covered employee," "professional employer agreement," and
3 "professional employer organization" have the same meanings as in RCW
4 82.04.540;

5 (9) "Extended warranty" has the same meaning as in RCW
6 82.04.050(7);

7 (10) The meaning ascribed to words and phrases in chapters 82.04
8 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and
9 effect with respect to taxes imposed under the provisions of this
10 chapter. "Consumer," in addition to the meaning ascribed to it in
11 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also
12 means any person who distributes or displays, or causes to be
13 distributed or displayed, any article of tangible personal property,
14 except newspapers, the primary purpose of which is to promote the sale
15 of products or services. With respect to property distributed to
16 persons within this state by a consumer as defined in this subsection
17 (10), the use of the property shall be deemed to be by such consumer.

18 **Sec. 5.** RCW 82.14.230 and 1989 c 384 s 2 are each amended to read
19 as follows:

20 (1) The governing body of any city, while not required by
21 legislative mandate to do so, may, by resolution or ordinance for the
22 purposes authorized by this chapter, fix and impose on every person a
23 use tax for the privilege of using natural gas or manufactured gas in
24 the city as a consumer.

25 (2) The tax (~~shall be~~) is imposed in an amount equal to the value
26 of the article used by the taxpayer multiplied by the rate in effect
27 for the tax on natural gas businesses under RCW 35.21.870 in the city
28 in which the article is used. The "value of the article used," does
29 not include any amounts that are paid for the hire or use of a natural
30 gas business in transporting the gas subject to tax under this
31 subsection if those amounts are subject to tax under RCW 35.21.870.

32 (3) The tax imposed under this section (~~shall~~) does not apply to
33 the use of natural or manufactured gas if the person who sold the gas
34 to the consumer has paid a tax under RCW 35.21.870 with respect to the
35 gas for which exemption is sought under this subsection.

36 (4) There (~~shall be~~) is a credit against the tax levied under
37 this section in an amount equal to any tax paid by:

1 (a) The person who sold the gas to the consumer when that tax is a
2 gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by
3 another ((state)) municipality or other unit of local government with
4 respect to the gas for which a credit is sought under this subsection;
5 or

6 (b) The person consuming the gas upon which a use tax similar to
7 the tax imposed by this section was paid to another ((state))
8 municipality or other unit of local government with respect to the gas
9 for which a credit is sought under this subsection.

10 (5) The use tax ((hereby)) imposed ((shall)) must be paid by the
11 consumer. The administration and collection of the tax ((hereby))
12 imposed ((shall be)) is pursuant to RCW 82.14.050.

13 **Sec. 6.** RCW 9.46.113 and 1975 1st ex.s. c 166 s 11 are each
14 amended to read as follows:

15 Any county, city or town which collects a tax on gambling
16 activities authorized pursuant to RCW 9.46.110 shall use the revenue
17 from such tax primarily for the purpose of ((enforcement of the
18 provisions of this chapter by the county, city or town law enforcement
19 agency)) public safety.

20 NEW SECTION. **Sec. 7.** 2009 c 551 s 12 (uncodified) is hereby
21 repealed.

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